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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/640,557	08/18/2000	Clifford Braun	992070.01	7021

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EXAMINER

THOMPSON, HUGH B

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 08/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/640,557

Applicant(s)

BRAUN ET AL.

Examiner

Hugh B. Thompson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 15, 18, 19 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-14, 16, 17 and 20-22 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention: a tree stand platform having a pair of closure members each pivotally attached to the frame and opening opposed to one another, and a tree stand platform having a pair of closure members pivotally attached to one another at a forward end of one and a rearward end of another.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 20 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Mr. John Swartz on August 6, 2003, a provisional election was made without oral traverse to prosecute the invention of the tree stand platform having a pair of closure members each pivotally attached to the frame and opening opposed to one another, claims 1-14, 16, 17, and 20-22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15, 18, 19, and 23 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14, 16, 17, and 20-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 1, 16, 17, and 20, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

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With respect to claim 1, line 10, it appears that "closure positions" should read --closure positions of the doors--.

With respect to claim 3, the word "means" is preceded by the word(s) "seat" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). Claim 10 recites a similar ambiguity with respect to "outer hinge means".

With respect to claim 17, line 12, there is no antecedent basis for "said closed" position. Note that in line 8, the term "closure" has been used.

With respect to claim 21, line 3, it appears that "laterally" should read --lateral--.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-14, 16, 17, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry #6,505,707 in view of Potts #766,061. Berry, as best seen in Figures 2, 3, 6, and 12, and recited in column 7, lines 5-45, discloses a tree stand comprised of a platform 12, tree attachment means 90, folding seat 50, folding seat back 44, back frame 46, and pivoting/hinged access door 32, and door frame members 12a, 12b, 32a, and 32b. Berry fails to

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disclose a pair of access doors hinged at outer edges to the frame members and opposed in movement for opening and closing positions.

Potts, as best seen in Figures 1 and 2, teaches the general utility of an access door assembly comprised of frame members 1, and opposed access doors 2, 2a, which are hinged (3, 3b) at outer edges thereof to the frame members and substantially fill the access opening. An assembly such as this provides for simple ingress and egress of a user/users thereof through openings. Therefore, to one of ordinary skill in the art, it would have been obvious, as a matter of engineering design choice, to provide the tree stand of Berry with a pair of access doors as taught by Potts, so as to provide for simple ingress and egress of a user/users thereof through openings, while producing no new an unexpected results.

Allowable Subject Matter

Claim 6 is objected to as being dependent upon rejected base claim 1, but would be allowable if rewritten in independent form including all of the limitations of claim 1, any intervening claims, and rewritten to overcome any Section 112 ambiguities as noted above. The primary reason for the allowable subject matter is the inclusion of first and second flaccid means, one spanning the front of the platform and the back frame, the other spanning the seat and the back frame. The prior art of record fails to teach or suggest the combination with the pivoting pair of closures absent the applicant's own disclose.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yamaguchi et al JP 8,218,613 A, Benton #5,927,435, and Roy #4,699,248 are cited to teach tree stands having access doors in a platform portion thereof.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hugh B. Thompson whose telephone number is (703) 305-0102. The examiner can normally be reached on Monday thru Friday 9 am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Stodola can be reached on (703) 308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3597 for regular communications and (703) 305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.



Hugh B. Thompson
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August 10, 2003